

**SUNNYSIDE ORCHARDS 3, BLOCK 9, LOT 4, AP SUBDIVISION  
THREE-LOT MINOR SUBDIVISION**

**STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS**

**CASE PLANNER:** Randy Fifrick

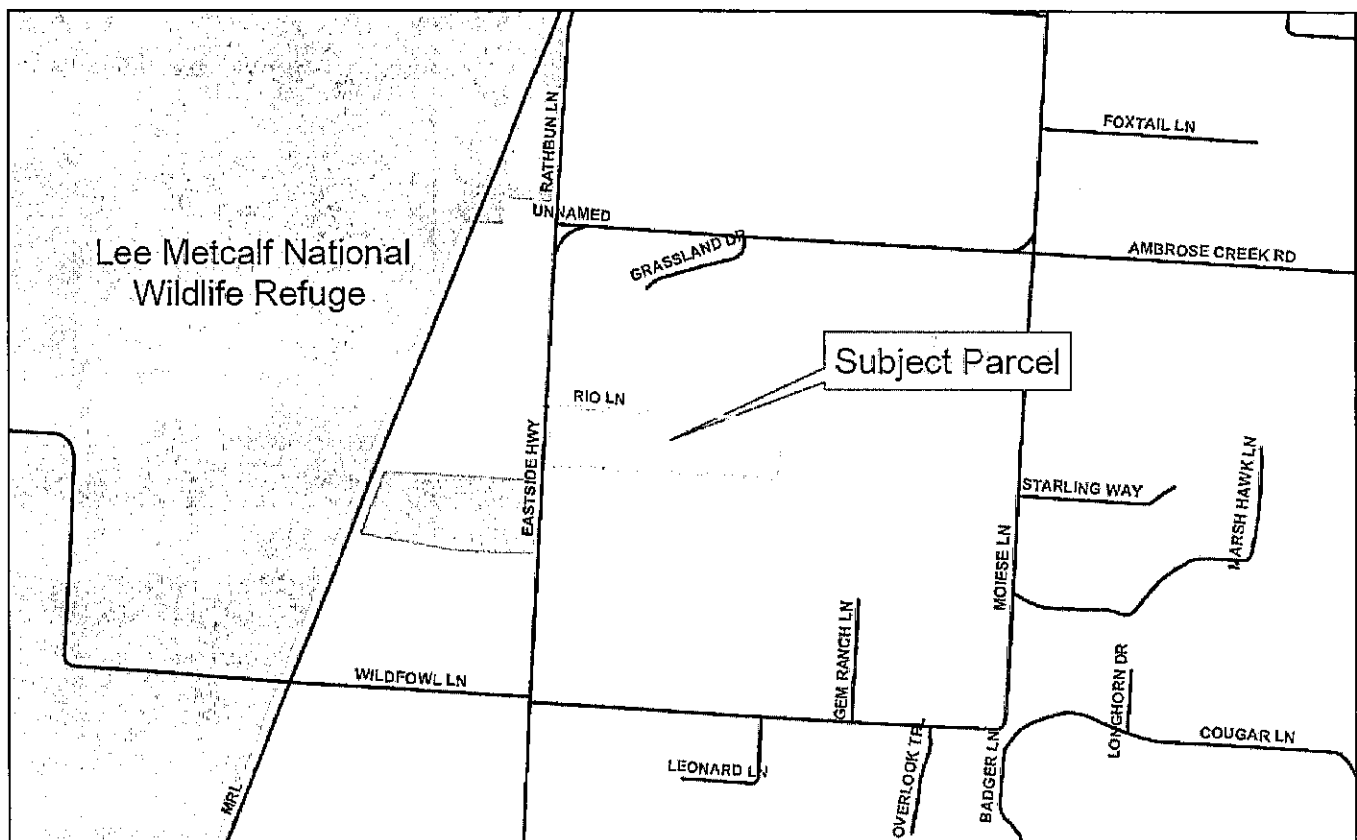
**REVIEWED/  
APPROVED BY:** John Lavey

**PUBLIC HEARINGS/  
MEETINGS:** BCC Public Meeting: 9:30 a.m. February 7, 2008  
Deadline for BCC action (35-working days): February 27, 2008

**SUBDIVIDER/OWNER:** Heather T. Carlton  
PO Box 6372  
Jackson, WY 83002

**REPRESENTATIVE:** Applebury Survey  
914 Highway 93  
Victor, MT 59875

**LOCATION OF REQUEST:** The property is located 3 miles northeast of Stevensville off of Eastside Highway. (See Map 1)



**Map 1: Location Map**  
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

A portion of the NW ¼ of Section 12, T9N, R20W, P.M.M., Ravalli County, Montana.

**APPLICATION  
INFORMATION:**

The subdivision application was determined complete on January 7, 2008. Agencies were notified of the subdivision and comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-8 of the staff report. **This subdivision is being reviewed under the subdivision regulations amended May 24, 2007.**

**LEGAL NOTIFICATION:**

Notice of the project was posted on the property and adjacent property owners were notified by regular mail postmarked January 22, 2008. No public comments have been received.

**DEVELOPMENT  
PATTERN:**

Subject property	Commercial
North	Commercial
South	Open Land/Proposed Subdivision
East	Open Land
West	Commercial

**INTRODUCTION**

The Sunnyside Orchards 3, Block 9, Lot 4, AP minor subdivision is a three-lot subdivision of 9.22 acres located north of Stevensville. The property is accessed off of Eastside Highway by an internal road, Rio Lane. Two of the lots are proposed for commercial use and one lot is proposed for residential use. There is an existing veterinary clinic located on Lot 4B.

Concurrent with the subdivision proposal, the subdivider is requesting one variance from Section 5-4-5(b)(2), which would require the developer to construct a hard-surfaced road within the subdivision to serve all lots.

*Staff recommends denial of the variance and conditional approval of the subdivision proposal.*

RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS  
FEBRUARY 7, 2008

SUNNYSIDE ORCHARDS 3, BLOCK 9, LOT 4, AP  
THREE-LOT MINOR SUBDIVISION

**RECOMMENDED MOTIONS**

1. That the variance request from Section 5-4-5(b)(2) of the Ravalli County Subdivision Regulations, which would require the developer to construct a hard-surfaced road within the subdivision to serve all lots, be **denied**, based on the findings of fact and conclusions of law in the staff report.
2. That the Sunnyside Orchards 3, Block 9, Lot 4, AP Minor Subdivision be **conditionally approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

**RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

***Notification of Proximity to Agricultural Operations.*** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

***Limitation of Access onto a Public Road.*** A "no-ingress/egress" restriction exists along the Eastside Highway frontage of this subdivision, excepting the approved common access approach to Eastside Highway. All lots within this subdivision must use this approved approach. This limitation of access may be lifted or amended only with the approval of the Board of County Commissioners. *(Effects on Local Services and Public Health & Safety)*

***Notification of Water Rights.*** Lots within this subdivision do not currently have the right to take irrigation water out of the infrastructure located within the subdivision. Taking water without a water right for irrigation purposes is illegal. *(Effects on Agricultural Water User Facilities)*

***Notification of Utility Easements.*** Within this subdivision there are utility easements and an easement for overhead power lines. No structure shall be allowed to encroach into or set upon the utility easements. The utility easements shall remain unobstructed and accessible at all times. *(Effects on Local Services)*

***Notification of Proximity to Montana Rail-Link Railroad.*** This subdivision is located near the Montana Rail-Link railroad grade. Standard operation of the railroad can include elevated noise levels, exhaust fumes, and engine headlights, which may be objectionable to some people. In addition, there are inherent hazards associated with railroad operations. *(Effects on Public Health & Safety)*

***Notification of Irrigation Facilities and Easements.*** Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water-right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. The filed subdivision plat shows the irrigation easements on the property. The

downstream water rights holders must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders have the right to use the easements to maintain the ditches. (*Effects on Agricultural Water User Facilities*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

***Waiver of Protest to Creation of RSID/SID.*** Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (*Effects on Local Services*)

***Living with Wildlife.*** Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, moose, bear, mountain lion, coyote, fox, skunk and raccoon. Contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see the Education portion of FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov). (*Effects on Wildlife and Wildlife Habitat, Effects on Natural Environment*)

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is high potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- c. **Garbage** should be stored in secure animal-resistant containers, in closed sheds or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. It is best not to set garbage cans out until the morning of garbage pickup.
- d. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the direct control of the owner, and not be allowed to roam as they can chase and kill big

game and small birds and mammals. And in turn, keeping pets confined helps protect them from being preyed upon by wildlife. Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). No outdoor cats shall be allowed within the subdivision.

- e. **Pet food (and livestock feed)** must be stored indoors, in enclosed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bear, mountain lion, skunk, raccoon, etc. **When feeding pets (and/or livestock)** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- f. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.
- g. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
- h. **Gardens**, fruit trees or orchards can attract wildlife such as bear and deer. Keep the produce and ripe fruit picked because ripe or rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- i. **Bird feeders** attract bears, especially from April 1<sup>st</sup> through the end of November. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- j. **Compost piles** can attract skunks and bears. If used they should be kept indoors or built to be wildlife-resistant.
- k. Purchasers of lots within this subdivision must recognize that the subdivision is located near the Lee Metcalf National Wildlife Refuge and natural sloughs associated with the Bitterroot River, where lawful waterfowl hunting and the associated **discharge of shotguns** could occur from early morning until sunset, and the season can run from September into January.

**Lighting for New Construction.** To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit [www.darksky.org](http://www.darksky.org). (*Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health & Safety*)

**Required Posting of County-Issued Addresses for Lots within this Subdivision.** The Three Mile Rural Fire District has adopted the Fire Protection Standards, which requires lot owners to post County-issued addresses at the intersection of the driveway leading to each

residence and the road providing access to the lot as soon as construction on the residence begins. *(Effects on Local Services and Public Health & Safety)*

**Access Requirements for Lots within this Subdivision.** The Three Mile Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Three Mile Rural Fire District for further information. *(Effects on Local Services and Public Health & Safety)*

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. *(Effects on Public Health & Safety)*

**Wood Stoves.** The County recommends that home owners refrain from installing wood stoves if possible. The County further recommends that wood and other biomass burning stoves not be used as the primary heat source. If a homeowner chooses to burn wood as a back-up heat source, the County strongly encourages them to install an EPA-certified wood stove as the best option to reduce air pollution and more specifically, to install an EPA-certified pellet stove. More information on low emission, EPA-certified wood stoves is available at <http://www.epa.gov/woodstoves/index.html>. The State of Montana offers an Alternative Energy Systems Tax Credit to offset the cost of purchasing and installing a low emission wood or biomass combustion device such as a pellet or wood stove. Besides the tax credit for qualifying wood stoves, individual Montana residents can claim a tax credit for energy conservation investments made to a home or other building. For more information on the energy conservation tax credits and ways to save energy, please see the *Warm Hearts, Warm Homes* webpage (<http://deq.mt.gov/Energy/warmhomes/index.asp>) on the Montana Department of Environmental Quality's website. *(Effects on the Natural Environment)*

**Control of Noxious Weeds.** A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. *(Effects on Agriculture and Natural Environment)*

**Archeological Resources.** If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate. *(Section 3-2-8(b)(v), RCSR, Impacts on Natural Environment)*

**Amendment.** Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the

subdivision including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*

4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Local Services and Public Health & Safety)*
5. Prior to final plat approval, the subdividers shall provide a letter from the Three Mile Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Three Mile Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services and Public Health & Safety)*
6. The following statement shall be shown on the final plat: "The Three Mile Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Three Mile Rural Fire District for further information". *(Effects on Local Services and Public Health & Safety)*
7. The subdivider shall submit a letter or receipt from the Stevensville School Districts stating that they have received an (amount)-per-new-lot contribution prior to final plat approval. *(Effects on Local Services)*
8. The subdivider shall submit a (amount)-per-new-lot contribution made prior to final plat approval to an account for Public Safety (Sheriff, E-911, OEM) to mitigate impacts on local services and public health and safety. *(Effects on Local Services and Public Health and Safety)*
9. The final plat shall show a no-ingress/egress zone along the Eastside Highway frontage of the subdivision, excepting the approach for the internal road, as approved by the Montana Department of Transportation. *(Effects on Local Services and Public Health & Safety)*
10. The final plat shall show a 10-foot-wide irrigation easement centered on the irrigation ditch that traverses the western property line, adjacent to Eastside Highway. *(Effects on Agricultural Water User Facilities)*
11. Prior to final plat approval, the applicant shall purchase and deliver the materials necessary (including pipe, grates, and cleanouts) to pipe the irrigation ditch on Lot 4A, in consultation with the Lee Metcalf National Wildlife Refuge. Prior to final plat approval, the applicant shall submit a letter from the Refuge manager stating that the appropriate materials were provided. *(Effects on Agricultural Water User Facilities)*

## **FINAL PLAT REQUIREMENTS (RAVALLI COUNTY SUBDIVISION REGULATIONS)**

*The following items shall be included in the final plat submittal, as required by the Ravalli County Subdivision Regulations, Section 3-4-4(a) et seq.*

1. A statement from the project surveyor or engineer outlining how each final plat requirement or condition of approval has been satisfied shall be submitted with the final plat submittal.
2. One paper and two mylar 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats (ARM 8.94.3003), shall be submitted prior to final plat approval. One paper copy may be submitted for the first proofing. The final plat shall conform to the preliminary plat decision. The following features are required on the Final Plat:
  - A. Project name
  - B. Title block
  - C. Certificate of registered owner – notarized
  - D. Certificate of registered land surveyor with seal
  - E. Certificate of governing body approval
  - F. Signature block for Clerk and Recorder, preferably in lower right hand corner
  - G. Certificate of public dedication
  - H. Certificate of park cash-in-lieu payment
  - I. Other certifications as appropriate
  - J. North arrow
  - K. Graphic scale
  - L. Legal description
  - M. Property boundaries (bearings, lengths, curve data)
  - N. Pertinent section corners and subdivision corners
  - O. Names of adjoining subdivisions/certificates of survey
  - P. Monuments found
  - Q. Witness monuments
  - R. Acreage of subject parcel
  - S. Curve data (radius, arc length, notation of non-tangent curves)
  - T. Line data (lengths to tenths of a foot, angles/bearings to nearest minute)
  - U. Lots and blocks designated by number (dimensions/acreage)
  - V. Easements/rights of ways (location, width, purpose, ownership)
  - W. No-ingress/egress zones
  - X. Irrigation canals including diversion point(s), etc.
  - Y. Existing and new roads (names, ownership, etc.)
3. The original copy of the preliminary plat decision shall be submitted with the final plat submittal.
4. Any variance decisions shall be submitted with the final plat submittal.
5. Copies of extensions of the preliminary plat approval period shall be submitted with the final plat submittal.
6. The final plat review fee shall be submitted with the final plat submittal.
7. A Consent to Plat form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plat submittal.
8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plat submittal.
9. The DEQ Certificate of Subdivision Approval or RCEH approval shall be submitted with the final plat submittal.
10. Copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal.



11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision shall be submitted with the final plat submittal.
12. Road and driveway approach and encroachment permits shall be submitted with the final plat submittal.
13. Evidence of a Ravalli County-approved road name petition(s) for each new road shall be submitted with the final plat submittal.
14. Engineering plans and specifications for all central water and sewer systems and any other infrastructure improvements requiring engineered plans shall be submitted with the final plat submittal.
15. Final Road Plans and Grading and Storm Water Drainage Plan shall be submitted with the final plat submittal.
16. Road certification(s) shall be submitted with the final plat submittal.
17. Utility availability certification(s) shall be submitted with the final plat submittal.
18. Road maintenance agreement(s), signed and notarized, shall be submitted with the final plat submittal.
19. A notarized statement from each downstream water user specifically authorizing any alteration, such as installation of culverts, bridges, etc., or relocation of an irrigation ditch shall be submitted with the final plat submittal.
20. Protective covenants to be filed with the final plat that are signed and notarized shall be submitted with the final plat submittal.
21. A copy of the letter sent to the appropriate school district(s) stating the applicant has made or is not willing to make a voluntary contribution to the school district to mitigate impacts of the subdivision on the school district that are not related to capital facilities; shall be submitted with the final plat submittal.
22. Signed and notarized homeowner association documents, including bylaws, covenants, and/or declarations shall be submitted with the final plat submittal.
23. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider, Professional Engineer, or contractor, as may be appropriate and required, shall be submitted with the final plat submittal. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2.)

## **SUBDIVISION REPORT**

### **COMPLIANCE WITH PREREQUISITES TO APPROVAL**

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

#### **A. Provides easements for the location and installation of any planned utilities.**

##### **Findings of Fact**

1. Existing and proposed utility easements are located along Eastside Highway and Rio Lane. (Application)
2. Existing and proposed utility easements are required to be shown on the final plat. (Final Plat Requirement 2)

##### **Conclusion of Law**

The proposed subdivision application provides for utility easements.

#### **B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.**

##### **Findings of Fact**

1. The subject property is accessed by Eastside Highway and Rio Lane. (Application)
2. Eastside Highway is listed as a state-maintained road. (GIS)
3. Rio Lane will provide legal and physical access to all lots in the subdivision off of Eastside Highway. (Plat)
4. The subdivider has attained an approach permit from the Montana Department of Transportation (MDT) for Rio Lane off of Eastside Highway. (Final Plat Requirement 12)

##### **Conclusion of Law**

Legal and physical access is adequate for this site.

#### **C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.**

##### **Findings of Fact**

1. The applicant is proposing to construct an internal subdivision road to provide access to all lots within the subdivision, but is requesting a variance to leave the surface gravel. Staff is recommending denial of the variance, which would result in the hard-surfacing of the road. (Application)
2. In a letter dated January 16, 2007, Steve Whitson, Lee Metcalf National Wildlife Refuge Manager, requested that the irrigation ditch traversing proposed Lot 4A be piped, to ease the Refuge's maintenance responsibilities. Condition 11 requires that the developer work with the Refuge to install the pipe. (Exhibit A-2)
3. The applicant is required to submit evidence that the improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider prior to final plat approval (Final Plat Requirements 1 and 16).

##### **Conclusion of Law**

With denial of the variance, the final plat requirements or an improvements agreement and guaranty will ensure that all improvements are installed.

- D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. This property has no water rights. (Application)
2. Condition 1 clarifies the disposition of water rights on and within this property.

Conclusion of Law

With the mitigating conditions of approval, this requirement has been met.

- E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. An irrigation ditch runs along the west property line next to Eastside Highway. (Application)
2. In a letter dated January 16, 2007, Steve Whitson, Lee Metcalf National Wildlife Refuge Manager, requested that the irrigation ditch traversing proposed Lot 4A be piped, to ease the Refuge's maintenance responsibilities. Condition 11 requires that the developer work with the Refuge to install the pipe. (Exhibit A-2)
3. To ensure that the appropriate irrigation easements are in place and future owners are aware they cannot plant or build within the easements, the following requirements and conditions shall be met prior to final plat approval:
  - a. *The subdivider shall provide for a 10-foot-wide irrigation easement centered on the irrigation ditch that runs along the west property line next to Eastside Highway on the final plat. (Condition 10)*
  - b. *A notification of the irrigation easement shall be included in the notifications document. (Condition 1)*
  - c. *Prior to final plat approval, the applicant shall purchase and deliver the materials necessary (including pipe, grates, and cleanouts) to pipe the irrigation ditch on Lot 4A, in consultation with the Lee Metcalf National Wildlife Refuge. Prior to final plat approval, the applicant shall submit a letter from the Refuge manager stating that the appropriate materials were provided. (Condition 11)*
  - d. *Section 3-4-4(a)(ii)(V) requires that the irrigation easement be shown on the final plat.*

Conclusion of Law

With the requirements and conditions of final plat approval, this prerequisite has been met.

- F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.**

Findings of Fact

1. Three lots are proposed with this subdivision, two of which are proposed as commercial. (Application)
2. Both commercial lots are two-acres in size, and the residential lot is greater than five-acres in size. (Application)
3. Parcels intended for nonresidential purposes, as well as residential lots larger than five-acres in size, are exempt from parkland dedication. (RCSR 6-1-5(b))

Conclusion of Law

No parkland dedication is required of this subdivision.

## **COMPLIANCE WITH APPLICABLE REGULATIONS**

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

### **A. These regulations, including, but not limited to, the standards set forth in Chapter 5.**

#### **Findings of Fact**

1. The applicant is requesting a variance from Section 5-4-5 (b) of the Ravalli County Subdivision Regulations, which requires all roads within the subdivision to be hard surfaced and meet county standards for new construction. Instead, the applicant has proposed a gravel surface with annual application of a dust palliative. (Application)
2. The Planning Department is recommending denial of the variance request. (Staff Report)
3. The lot layout as indicated on the preliminary plat appears to meet the design standards in Chapter 5 of the Ravalli County Subdivision Regulations. (RCSR Ch. 5)
4. This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations. (RCSR Ch. 3)

#### **Conclusion of Law**

The procedures for the application and review of this proposed subdivision have been followed.

### **B. Applicable zoning regulations.**

#### **Findings of Fact**

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2193). The application complies with Resolution 2193.
2. The property is not within one of the voluntary zoning districts in Ravalli County. (RC GIS Data)

#### **Conclusion of Law**

This proposal appears to comply with existing zoning regulations.

### **C. Existing covenants and/or deed restrictions.**

#### **Finding of Fact**

There are no existing covenants on the property. (RC Clerk & Recorder's Office)

#### **Conclusion of Law**

Since there are no covenants, this criterion does not apply.

### **D. Other applicable regulations.**

#### **Findings of Fact**

1. Following are regulations that may apply to this subdivision:
  - Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
  - Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
  - Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
  - Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
  - Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)

2. The applicants were made aware of the applicable regulations at the pre-application conference held on June 8, 2005. (Application)

#### Conclusion of Law

The application appears to meet all of the applicable regulations.

#### **E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:**

##### **CRITERION 1: EFFECTS ON AGRICULTURE**

##### **Findings of Fact:**

1. The proposed minor subdivision on 9.22 acres will result in 3 lots that range in size from 2.00 acres to 5.22 acres. The property is located approximately 3 miles northeast of the community of Stevensville. (Application)
2. This parcel is classified for tax purposes as commercial rural. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services)
3. Parcels adjacent to the subject property are classified for tax purposes as agricultural rural, vacant land rural and residential rural. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services)
4. The new soils data available from the NRCS Web Soil Survey shows there are no soils on the property that are listed as Prime Farmland Soils or Farmland of Statewide Importance. Farmland of local importance covers entire property. (NRCS)
5. In an email dated August 21, 2007, Jay Skovlin, local NRCS soil scientist, stated that the Farmland of local importance classification was not intended to be used to determine important agricultural land for subdivision review. It is the lowest tier of farmland soils and the criteria have a low threshold so this classification does not show the most productive soils in the Valley. The classification will be used as a preliminary screening tool for the Farm and Ranch Land Protection Program. (U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS)) (Exhibit A-1)
6. The applicants submitted a Ravalli County Subdivision Ground Disturbance and Noxious Weed Management Plan that stated spotted knapweed and common tansy were found on the property. (Application)
7. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
8. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agriculture:*
  - *A notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2)*
  - *The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to final plat approval. (Final Plat Requirement 11)*
  - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

#### **Conclusion of Law:**

With the mitigating conditions of approval and requirements of final plat approval, the impacts of the subdivision on agriculture will be reduced.

## **CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES**

### **Findings of Fact**

1. According to the application, there are no water rights or irrigation infrastructure currently associated with this property. (Application)
2. An irrigation ditch runs along the west property line next to Eastside Highway. (Application)
3. Steve Whitson, the U.S. Fish and Wildlife Service / Lee Metcalf Wildlife Refuge manager, has requested that the applicant pipe the irrigation ditch up to and throughout this subdivision, citing concerns that past residential development has resulted in a deterioration of their irrigation water supply in both quantity and quality. (Exhibits A-2)
4. Moiese Meadows, a subdivision to the south, was given conditional approval by the BCC on July 19, 2007. During the review of that subdivision, Mr. Whitson made the same request of the subdivider as he now makes. The subdivider and Mr. Whitson worked out the following agreement: Prior to final plat approval, the applicant was required to purchase and deliver the materials necessary (including pipe, grates, and cleanouts) to pipe the irrigation ditch from the head gate at the Supply Ditch (approximately ¼ mile east of the southeast corner of the subdivision) to the northern boundary of the subdivision, in consultation with the Lee Metcalf National Wildlife Refuge. Prior to final plat approval, the applicant was required to submit a letter from the Refuge manager stating that the appropriate materials were provided. (Moiese Meadows PPD)
5. Staff is recommending that the developer of this subdivision enter into an agreement similar to that of the agreement settled upon for Moiese Meadows, which is reflected in condition 11.
6. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agricultural water user facilities:*
  - *The subdivider shall provide for a 10-foot-wide irrigation easement centered on the irrigation ditch that runs along the west property line next to Eastside Highway on the final plat. (Condition 10)*
  - *The applicant is required to purchase and deliver the materials necessary (including pipe, grates, and cleanouts) to pipe the irrigation ditch from the southern boundary of the subdivision to the northern boundary of the subdivision, in consultation with the Lee Metcalf National Wildlife Refuge. Prior to final plat approval, the applicant shall submit a letter from the Refuge manager stating that the appropriate materials were provided. (Condition 11)*
  - *A notification of the irrigation easement shall be included in the notifications document. (Condition 1)*
  - *A notification that no water rights exist for this subdivision shall be included in the notifications document. (Condition 1)*
  - *Section 3-4-4(a)(ii)(V) requires that the irrigation easements be shown on the final plat.*

### **Conclusion of Law**

With the conditions and requirements of final plat approval, impacts to agricultural water user facilities will be reduced.

## **CRITERION 3: EFFECTS ON LOCAL SERVICES**

### **Findings of Fact:**

#### **Fire Department**

1. The subdivision is located within the Three Mile Rural Fire District. (Application)
2. Notification letters were sent to the Three Mile Rural Fire District requesting comments on December 20, 2006 and January 22, 2008, but no comments have been received from the Fire District. (Subdivision File)
3. The Three Mile Rural Fire District has adopted the Fire Protection Standards, which address access, posting of addresses, and water supply requirements.
4. *The following conditions will mitigate impacts of the subdivision on the Fire District:*

- Provisions in the covenants requiring that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2)
- The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Conditions 2 and 4)
- Prior to final plat approval, the subdividers shall provide a letter from the Three Mile Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Three Mile Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Condition 5)
- The following statement shall be shown on the final plat: "The Three Mile Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Three Mile Rural Fire District for further information". (Condition 6)

#### School District

5. With this subdivision, it is estimated that approximately 0.5 school-aged children will be added to the Stevensville School District, assuming an average of 0.5 children per household (Census 2000).
6. A letter was sent by the Stevensville School District dated October 27, 2005 to the applicant. In the letter, the school district states that they do not travel on private roads. In addition, the letter states that this subdivision will have an impact of \$22,500 on the school district. (Application)
7. The Stevensville School District has not completed an impact fee study at this time, and Ravalli County has not adopted impact fees to date. The County cannot request a contribution for capital expenses until an impact fee has been adopted. (MCA 7-6-1603)
8. Ernie Jean, County Superintendent, sent a letter to the Ravalli County Commissioners stating that Ravalli County Educational Transportation Committee recently adopted a resolution requesting that the Commissioners establish a requirement that the developers of each subdivision establish a shelter at a bus stop and a possible turnout, or turnaround if appropriate, at each subdivision entrance that is off a County owned and maintained road. (Exhibit A-3)
9. Considering that Eastside Highway is a State-maintained road, the number and size of the lots of the proposal, the use of the lots, and the surrounding uses and lot densities, the Planning Department determined that a bus turnout is not necessary for this subdivision. (Staff Determination)
10. County School Superintendent, Ernie Jean, has provided the Planning Department the Budget Per Pupil/Tax Levy Per Pupil information for Ravalli County. According to the document, the tax levy per pupil, excluding capital, would be \$2,558.50 for the Stevensville School District (averaging Stevensville HS and Stevensville Elem). (Exhibit A-4)
11. To mitigate impacts on the School District, the applicant shall submit a letter or receipt from the Stevensville School District stating that they have received an (amount) per-lot contribution prior to final plat approval. (Condition 7 and Final Plat Requirement 21) (Staff Note: Since the applicants and the School District did not agree on an amount, staff recommends that the BCC negotiate an amount with the applicant and include the appropriate finding(s) supporting the amount in their decision.)

#### Public Safety

12. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Application)

13. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on December 20, 2006 and January 22, 2008, but no comments have been received from the Sheriff's Office. (Subdivision File)
14. *To mitigate impacts on local services, the subdivider shall:*
- *Submit an (amount)-per-lot contribution made prior to final plat into an account for Public Safety (Sheriff, E-911, OEM) to mitigate impacts on local services and public health and safety. (Condition 8)*

#### Emergency Services

15. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Dept. Marcus Daly Hospital was contacted on December 20, 2006 and January 22, 2008 but no comments have been received to date. (Application)
16. *To mitigate impacts on emergency services, the subdivider shall meet the following condition:*
- *The applicant shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Condition 4)*

#### Water and Wastewater Districts

17. Individual wells and wastewater treatment systems are proposed to serve the lots. The property is not near any municipal water or wastewater systems. (Application)

#### Solid Waste Services

18. Bitterroot Disposal provides service to this site. (Application)
19. Notification letters were sent to Bitterroot Disposal requesting comments on December 20, 2006 and January 22, 2008, but no comments have been received. (Subdivision File)

#### Utilities

20. The proposed subdivision will be served by Northwestern Power Company and Qwest Communications. The utility companies have been notified of the proposed subdivision. (Application)
21. Notification letters were sent to Northwestern Power Company and Qwest Communications requesting comments on December 20, 2006 and January 22, 2008, but no comments have been received by the company. (Subdivision File)
22. *The following requirements will mitigate impacts of the subdivision on local utilities:*
- *Existing and proposed utility easements shall be shown on the final plat. (Final Plat Requirement 2)*
  - *A notification of utility easements shall be included in the notifications document. (Condition 1)*
  - *The applicant shall submit a utility availability certification from Northwestern Power Company and Qwest Communications prior to final plat approval. (Final Plat Requirement 17)*

#### Roads

23. There are (2) two proposed commercial lots and (1) one proposed residential lot within this subdivision. (Application)
24. The property will be accessed off of Eastside Highway and the internal road, Rio Lane.
25. Eastside Highway, a State-maintained road, will provide access to the subdivision. (Application)
26. The applicant is applying for a variance from hard surfacing Rio Lane. Staff is recommending denial of the variance. With denial of the variance, the applicant will be required to hard surface Rio Lane in accordance with the approved road plans. (Variance Application)
27. The applicant submitted and received an approved approach permit on May 8, 2007 from MDT. (Application)



28. To mitigate impacts on the roads leading to the subdivision, the following conditions and requirements shall be met:

- A copy of the General Discharge Permit for Stormwater Associated with Construction Activity from DEQ shall be submitted prior to final plat approval, if applicable. (Final Plat Requirement 10)
- To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (Conditions 2 and 3)
- The final plat shall show a no-ingress/egress zone along the Eastside Highway frontage of the subdivision, excepting the approach, as approved by the Montana Department of Transportation. (Condition 9 and Final Plat Requirement 2)
- The notifications document filed with the final plat shall include a statement notifying lot owners of the no ingress/egress restriction. (Condition 1)

#### General

29. Growth may impact the quality of general services that Ravalli County can provide to residents. (Exhibit A-6)

#### Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

#### **CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT**

##### Findings of Fact:

##### Air Quality

1. This proposed subdivision would add one new home and one new commercial property to an area of existing low density development north of Stevensville. (Plat) (Site Visit)
2. In a letter dated November 9, 2007, the Montana Department of Environmental Quality (DEQ) identified Missoula, Lincoln, and Ravalli County as communities with a high probability of failing to meet the recently revised National Ambient Air Quality Standards for particulate matter. Sources of particulate from this subdivision could come from vehicles or wood-burning stoves. (Exhibit A-7)
3. To mitigate impacts on air quality, the covenants shall include a recommendation that EPA-certified wood stoves should be installed to reduce air pollution and that wood burning stoves should not be used as the primary heat source. (Condition 2)

##### Ground Water Quality

4. The applicants are proposing individual wells and wastewater facilities. (Application)
5. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Application)
6. The applicant is required to submit documentation from the RCEH stating their approval of the subdivision prior to final approval. (Final Plat Requirement 9)

##### Light Pollution

7. The addition of a commercial property and a residential home in an area that currently has lower density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark-Sky Association)
8. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)

## Vegetation

9. The applicants submitted a Ravalli County Subdivision Ground Disturbance and Noxious Weed Management Plan that stated the western half of the subdivision been mowed. The only prevalent noxious weed is spotted knapweed with localized areas of common tansey. (Application)
10. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (MCA 7-22-2152)
11. The Montana Natural Heritage Program found that there were no plant species of concern within the same sections as the subject property (Application).
12. *To mitigate impacts on the natural environment:*
  - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2 and Final Plat Requirement 11)*

## Noise Levels

13. In a letter received from FWP recommend a covenant to address the following issue: This subdivision is about one-quarter mile from the extensive riparian areas associated with the Bitterroot River and its slough, where waterfowl hunting could be expected to occur, and there is potential for conflict between the noise from hunting and residents of this subdivision. (Application)
14. *To mitigate impacts of the subdivision being in close proximity to noise from hunting along the Bitterroot River, a notification of the potential noise shall be included in the covenants. (Condition 2)*

## Historical/Archeological Sites

15. The application states that there area no known sites of historical significance on the property. (Application)
16. *To mitigate impacts on the natural environment, the covenants shall include an archeological resources section. (Condition 2)*

## Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval

## **CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT**

### Findings of Fact:

1. In a letter received November 17, 2005, Fish, Wildlife & Parks (FWP) stated that this property has an elevated probability of human/wildlife conflict and recommended including "living with wildlife" covenants. (Application)
2. FWP stated that wildlife such as white-tailed deer, fox and skunk are found in the area, as well as possible black bear and possible mountain lion. (Application)
3. The property is not located within big-game winter range. (FWP Data)
4. According to the Montana Natural Heritage Program, Western Spotted Skunk, Bird Rookery and Bobolink were identified as species of concern as they have been known to exist in the same section as the proposed subdivision. The subdivider requested and received a waiver from the requirement to submit a sensitive species report because of lack of habitat on the property and negligible impacts for all species. (Application)
5. *To mitigate impacts on wildlife and wildlife habitat, the following conditions shall be met:*
  - *The covenants shall include a living with wildlife section. (Condition 2)*
  - *The covenants shall include a provision recommending full cut-off lighting. (Condition 2)*

Conclusion of Law:

With the mitigating conditions of approval, impacts on Wildlife & Wildlife Habitat will be reduced.

**CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY**

Findings of Fact:

Traffic Safety

1. Access is proposed off Eastside Highway. (Application)
2. The applicant submitted and received an approved approach permit on May 8, 2007 from Montana Department of Transportation. (Application)
3. *The requirements and conditions listed under Roads in Criterion 3 will mitigate the impacts of the subdivision on traffic safety.*

Emergency Vehicle Access and Response Time

4. The proposed subdivision will be served by the Three Mile Rural Fire District, the Ravalli County Sheriff's Office, and Marcus Daly Memorial Hospital EMS Department. (Application)
5. *The requirements and conditions listed under Fire District, Law Enforcement, Emergency Services, and Roads in Criterion 3 will mitigate the impacts of the subdivision on emergency vehicle access and response time.*

Water and Wastewater

6. The applicants are proposing individual wells and wastewater facilities. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Application)
7. *To mitigate effects on water and wastewater, the following shall be met:*
  - *The DEQ Certificate of Subdivision Approval, RCEH approval, or subdivision review exemption from RCEH shall be submitted with the final plat submittal. (Final Plat Requirement 9)*

Natural and Man-Made Hazards

8. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)
9. This subdivision is located .15 miles from the Montana Rail-Link Railroad. (RC GIS)
10. The addition of a commercial property and a residential home in an area that currently has lower density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark-Sky Association)
11. *To mitigate possible impacts on public health and safety, the following conditions shall be met:*
  - *A notification of the proximity to the Montana Rail-Link Railroad shall be included in the notifications document. (Condition 1)*
  - *The covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*
  - *The covenants shall include a statement regarding radon exposure. (Condition 2)*

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safety

## **VARIANCE REQUEST**

The subdivider has requested a variance from Section 5-4-5(b)(2), which would require the developer to construct a hard-surfaced road within the subdivision to serve all lots.

### **Variance Analysis**

Section 7-3-5(a), RCSR, outlines two sets of criteria to be used in analyzing a variance request.

#### **Prerequisite Variance Criteria**

In order for a variance to be considered for approval, the BCC must first determine that the variance request meets these stipulations:

1. Strict compliance with these regulations will result in undue hardship.
2. Compliance is not essential to the public welfare.

#### **Variance Review Criteria**

If and only if a positive determination is made on both of the prerequisite criteria, the BCC may then consider the variance for approval, based on the five variance review criteria:

- A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
- B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.
- C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).
- D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.
- E. The variance will not cause a substantial increase in public costs.

Both sets of criteria were reviewed simultaneously. Findings for Prerequisite Criterion #1 are based on an analysis of Variance Review Criteria B and C. Findings for Prerequisite Criterion #2 are based on an analysis of Variance Review Criteria A, D, and E.

### **Five Variance Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

#### **Findings of Fact:**

1. The applicant is proposing to improve Rio Lane to county standard for roads that serve 3-5 unit subdivisions, except for the hard surfacing requirement. (Variance Application)
2. The road plans, which include plans for hard surfacing, have received preliminary approval from the Ravalli County Road and Bridge Department. (Subdivision File)
3. An access on to Eastside Highway already exists at this location for the existing commercial property. (Site Visit)
4. The Montana DEQ has identified that particulate matter (PM-10 and PM-2.5) "are usually associated with fugitive dust from wind-blown sand and dirt from roadways, fields, and construction sites". The smaller PM-2.5 particles often referred to as "fine particulates," are easily inhaled and can cause tissue damage, emphysema, bronchitis, and cardiovascular complications. Children, seniors, and individuals with pre-existing respiratory diseases are most susceptible to these health risks. (Montana DEQ Citizens Guide to Air Quality in Montana' <http://www.deq.mt.gov/AirMonitoring/citguide/understanding.asp>)

5. In lieu of hard surfacing the road, the applicant is proposing to apply a dust abatement treatment once a year.
6. The subdivider is proposing an annual treatment of dust abatement; however the County has no way to ensure that it actually occurs.
7. The application includes a letter from the adjoining property owner to the north, Gary Snook, who states that he and his wife do not mind if the proposed road on their common property line is gravel. (Application)
8. In an email dated January 29, 2008, David Ohnstad stated that he agreed that the granting of the variance will be substantially detrimental to the public health, safety or general welfare. He states that air quality is already impacted and any further development on un-paved roadways will only increase that problem. He further states that administering compliance on an "annual application of a dust palliative" would be impossible. (Exhibit A-8)

Conclusion of Law:

Without a guarantee that dust abatement will be perpetually applied to the internal subdivision road, granting the variance may be substantially detrimental to public health and safety.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Findings of Fact

1. The applicant states this property is a unique in that it is proposing a dead end road for these lots and the lot to the North and is only asking for a variance from paving. (Application)
2. There are many paved dead end roads or cul-de-sac roads that serve 3-5 lots in the county.
3. In an email dated January 29, 2008, David Ohnstad stated the conditions on which the request is based are not unique to this property. (Exhibit A-8)

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevents the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Findings of Fact:

1. The applicant states the only condition which would prevent the building of the roadway to county standards is the cost involved. (Variance Application)
2. There do not appear to be any physically limiting conditions that would prevent the subdivider from meeting the strict letter of the RCSR. (Site Visit, Staff Determination)
3. In an email dated January 29, 2008, David Ohnstad stated physical conditions do not prevent the applicant from meeting the regulations. (Exhibit A-8)

Conclusion of Law:

Physical conditions do not prevent the subdivider from meeting the strict letter of the regulations.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres. The application complies with the interim zoning regulation. (Resolution 2038)
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.4:** Improve and maintain existing infrastructure and public services.

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs.

- The construction of a hard-surfaced road would constitute a longer lasting improvement to the internal road than would a yearly treatment of dust abatement.

Conclusions of Law:

1. The proposal complies with the interim zoning regulation.
2. Provisions in the Growth Policy do not support granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

1. The costs associated with improving the road is a private costs to be borne by the developer. (RCSR 5-1-6)
2. In an email dated January 29, 2008, David Ohnstad stated there will be an increase in public costs if the variance is approved. He states that the cost of meeting air quality standards will fall to property owners throughout the county. (Exhibit A-8)
3. MDEQ has identified that Ravalli County fails to meet the National Ambient Air Quality Standards for Particulate Matter. As a result, the County may be required to submit a federally enforceable air pollution control plan to the EPA for approval. (Exhibit A-7) While the granting of this variance may contribute to poor air quality, there is no evidence that it will be the sole cause of Ravalli County being designated a "nonattainment area".

Conclusion of Law:

The granting of the variance does not appear to substantially increase public costs.

**Prerequisite Variance Criteria**

**A. Strict compliance with these regulations will result in undue hardship.**

Finding of Fact:

Criteria B and C of the variance criteria were used to determine whether or not there is a hardship. There do not appear to be special conditions unique to this subdivision that would necessitate strict compliance with the regulations.

Conclusion of Law:

Strict compliance with these regulations will not result in undue hardship.

**B. Compliance is not essential to the public welfare.**

Finding of Fact:

Criteria A, D, and E of the variance criteria can be used to determine whether or not compliance with Section 5-4-5(b)(2) is essential to public welfare. Criterion A and D find that compliance is essential to the public welfare, while Criterion E does find that compliance is not essential to the public welfare.

Conclusion of Law:

Compliance is essential to the public welfare.

### **C. Overall Findings and Conclusions on Hardship and Public Welfare**

#### **Findings of Fact**

1. Strict compliance with these regulations will not result in undue hardship.
2. Compliance is essential to the public welfare.
3. There is an overall negative finding on the variance review criteria.

#### **Conclusion of Law**

The variance application does not provide evidence that there is an undue hardship, nor that compliance with the RCSR is essential to the public welfare.

## Renee Van Hoven

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From: Skovlin, Jay - Hamilton, MT [Jay.Skovlin@mt.usda.gov]  
Sent: Tuesday, August 21, 2007 11:41 AM  
To: Renee Van Hoven  
Subject: Farmlands of Local Importance

Hi Renae,

Sorry I haven't gotten back to you sooner. The last couple of weeks have been very busy. My computer crashed on top of it all...

I have a copy of the letter from the Bitterroot Conservation District and the NRCS State Conservationist approving the criteria for Ravalli County. It is hardcopy, so let me know if you would like to have a copy on file and I will get it to you.

The farmland classification hierarchy is as follows:

Prime farmland  
Prime farmland if irrigated  
Farmland of Statewide Importance  
Farmland of Local Importance

The criteria lessens for each class making farmland of local importance the easiest class to get into. Farmland of local importance and any higher farmland class triggers eligibility for the Farm and Ranchlands Protection Program (FRPP), which is a program offered by the NRCS to help land owners protect their land through the use of conservation easements.

On January 9th, 2007, Area Resource Soil Scientist, Neal Svendsen, and the staff of the Bitterroot Valley Soil Survey met with the Bitterroot Conservation District and agreed on the proposed criteria for farmlands of local importance. Lake, Mineral, Missoula, and Sanders counties have all set up criteria for locally important farmland. So the purpose of meeting with the conservation district was to review the criteria from these other counties (especially Missoula County) to see if the yield criteria were appropriate for Ravalli County. Concerns were raised by the conservation district board members that this designation not be used in the newly revised subdivision regulations. The intent of this designation of the soil map units is mostly to allow for eligibility of these lands for the FRPP and not that it be used in any way in the subdivision review process. To my knowledge it is not used in this fashion by any of the above mentioned counties that have already approved the designation.

Farmlands of local importance identifies lands that may have the next best potential for agricultural uses (farming or grazing) beyond what is already designated as prime or statewide. By looking at the yield criteria, you will notice that the thresholds are fairly low (especially for grazing) for getting into this class.

The criteria is as follows:

The soil map unit is not already designated as Prime Farmland, Prime Farmland if irrigated, or Farmland of Statewide Importance, and has one or more of the following:

1. Soil map units that have 50% or more named components meeting prime or statewide criteria and/or
2. Soil map units that have slopes less than or equal to 15%, are not frequently flooded, are poorly drained or better, and where at least 50% of the named components meet at least one of the following minimum yields:
  - a. Irrigated alfalfa hay yields > 4.0 tons/ac.
  - b. Irrigated grass hay yields > 3.0 tons/ac.
  - c. Non-irrigated grass hay yields > 1.0 ton/ac.
  - d. Irrigated alfalfa-grass hay yields > 3.5 tons/ac.
  - e. Irrigated pasture > 5.0 AUM.
  - f. Non-irrigated pasture > 1.0 AUM.

I hope this helps clear up some confusion on this designation. Please let me know if you have any further questions about the soil survey.





United States Department of the Interior

FISH AND WILDLIFE SERVICE

Lee Metcalf National Wildlife Refuge  
4567 Wildfowl Lane  
Stevensville, Montana 59870

RECEIVED  
JAN 17 2007  
IC-07-01-50  
Ravalli County Planning



January 16, 2007

Ravalli County Planning Department  
Attn: Jennifer De Groot, Projects Planner  
215 South 4<sup>th</sup> Street; Suite F  
Hamilton, MT 59840

Dear Jennifer:

This letter is in response to your request for comments on the Sunnyside Orchards No. 3, Block 9, Lot 4, AP Minor Subdivision.

My first comment is related to Criteria #5 Effects on Wildlife and Habitat. I would like to endorse the "Living with Wildlife" Covenants that the Montana Fish, Wildlife, and Parks suggest for such subdivisions. In addition, I would prefer that covenants require that no outside cats be allowed.

My second comment is related to Criteria #2 Effects on Agricultural Water-Use Facilities, Criteria #4 Effects on Natural Environment and Criteria #5 Effects on Wildlife and Habitat. As I have pointed out in previous comments on subdivision that have a refuge supply ditch running through or along the property I would like those ditches piped. The ditch that runs along the west side of lot 4A conveys water to the Refuge that is utilized for the management of fish and wildlife habitat, which is critical to the mission and purpose of the Refuge. This water is sometimes used for agricultural purposes on the Refuge as well.

With the development of residential housing along our supply ditches it becomes more and more of a burden on the Refuge to ensure that adequate water is reaching the Refuge. This water is critical to the mission of Lee Metcalf NWR. Traditionally the refuge has utilized fire as a way to annually clean and keep the ditches maintained. Then every few years the ditches are accessed with heavy equipment and cleaned out. Maintaining these ditches now with the residential development around them has become a very daunting task for the refuge. It already requires a significant amount of staff time to contact and coordinate with so many different landowners. Any delay in the maintenance of the ditch limits the amount of water conveyed, often resulting in the Refuge receiving less than our appropriated water rights. With so many individual housing units along the ditches it has also become a very difficult task in regulating water use. Many people along the ditches take water from the ditches, which also limits the

EXHIBIT A-2


supply of water we receive. This requires significant amount of staff time to coordinate ditch management and enforcement of water rights law.

My request is that the ditch be piped up to and through this Subdivision as a part of infrastructure construction. To convey proper amounts of water the pipe will need to be 24" diameter with cleanouts located every 300 feet, at every turn equal to or less than 90 degrees, and at all road crossings. The ditch will need to be piped through the property. The specifications of this project will have to be worked out with US Fish and Wildlife Service engineers when the time comes to install it. There are also other water right users along this ditch that would have to be included on installing this pipe to ensure they have access to water.

This request is in compliance with two (2, 4 & 5) of the six Subdivision Review Criteria as set forth in the Montana Code Annotated: 2- Effects on Agricultural Water-User Facilities, 4 – Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution, and noxious weeds, and 5 – Effects on wildlife and wildlife habitat, including fisheries and mammals.

If you have any questions, feel free to contact me at anytime, I do plan on attending the November 1, 2006 public hearing on behalf of the Refuge and would like to be allotted time to express these concerns on behalf of the Refuge.

Thanks,



Steve Whitson  
Refuge Manager

RECEIVED

OCT 15 2007

IC-07-10-1305  
Ravalli County Planning Dept.



RECEIVED

OCT 15 2007

Ravalli County Commissioners

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October 15, 2007

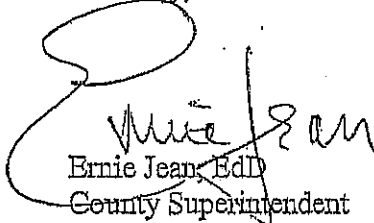
James Rokosch, Chair  
Ravalli County Commissioners  
215 South 4<sup>th</sup> Street, Suite A  
Hamilton, MT 59840

Dear Commissioner Rokosch,

In the last meeting of the Ravalli County Educational Transportation Committee a discussion was held concerning the new sub-divisions in Ravalli County. There was a great concern for the safety of the children who attend Ravalli County schools and who live with the varying conditions in the variety of subdivisions in the county.

Therefore, the group unanimously adopted a resolution requesting the Commissioners establish a requirement that the developers of each subdivision establish a shelter at a bus stop and a possible turnout, or turn around if appropriate, at each subdivision entrance that is off the county owned and maintained road.

Sincerely,



Ernie Jean, EdD  
County Superintendent

EXHIBIT A-3

## Budget Per Pupil/Tax Levy Per Pupil

Year 2007-2008

School	Total Budget	Students October Count	Budget Per Pupil
Corvallis	9,246,716	1,413	6,544
Stevensville Elem	4,313,675	615	7,014
Stevensville HS	3,844,872	426	9,026
Hamilton	10,696,135	1,616	6,619
Victor	2,354,712	349	6,747
Darby	3,918,507	435	9,008
Lone Rock Elem	2,010,732	301	6,680
Florence	6,004,225	898	6,686

NOTE: 1. This does not include any federal funds or budget for federal programs. This makes these figures reflect budget and revenue only from state, county and local sources.

School	Total Tax Except Capital	Students October Count	County & State Levy*	Tax Levy Per Pupil Exc Capital	Total Capital	Per Pupil Tax Capital	Total Tax Levy Inc Capital	Tax Levy Per Pupil Inc Capital
Corvallis	1,894,368	1,413	941,511	2,007	166,126	117.57	3,002,005	2,125
Stevensville Elem	1,077,017	615	412,448	2,422	120,541	196.00	1,610,006	2,618
Stevensville HS	818,794	426	329,287	2,695			1,148,081	2,695
Hamilton	2,714,396	1,616	1,050,013	2,329	909,210	562.63	4,673,619	2,892
Victor	468,192	349	202,861	1,923	297,013	851.04	968,066	2,774
Darby	1,022,738	435	371,211	3,204		0.00	1,393,949	3,204
Lone Rock Elem	432,039	301	223,920	2,179	102,211	339.57	758,170	2,519
Florence	1,234,419	898	776,153	2,239	24,542	27.33	2,035,114	2,266

NOTE: \* County levied Retirement and Transportation



Montana Department of Transportation

Missoula District Office  
2100 W Broadway  
PO Box 7039  
Missoula, MT 59807-7039

Jim Lynch, Director  
Brian Schweitzer, Governor

December 27, 2006

Jennifer De Groot, Planner  
Ravalli County Planning  
215 South 4<sup>th</sup> Street; Suite F  
Hamilton, MT 59840

DEC 28 2006  
IC-06-12-1953  
Ravalli County Planning Dept.

Subject: Sunnyside Orchards No. 3, Block 9, Lot 4

Jennifer, thanks for writing the Montana Department of Transportation (MDT) regarding the proposed 3-lot minor subdivision "Sunnyside Orchards, No. 3, Block 9, Lot 4". The proposed subdivision is located between Stevensville and Florence, adjacent to State Highway Secondary 203 (Eastside Highway) in Ravalli County.

From the submitted information, it appears the subdivision is proposing to access the Eastside Highway (S-203). MDT's first priority is the Safety and Operations of the Transportation System. We are concerned with current and future access to the Eastside Highway. There are many rectangular tracts of land adjacent to the highway that are developing and requesting access from the MDT. I encourage the Ravalli County Planning Department to work with the landowners and developers to provide interconnectivity between developments to allow for fewer direct accesses which will help maintain the function and integrity of the State Transportation System.

**Any new access or change in use of an existing access** will require an approach permit to be approved by the MDT. As such, the developers will need to contact the MDT Missoula Office and complete a Driveway Approach Application & Permit; and an Environmental check list. Approaches need to be constructed to MDT's approach standards, meet sight distance requirements and have no negative effect on the transportation system or adjacent existing accesses. If the volume of vehicles per hour is high enough, then the approach permit will go through MDT's systems impact analysis in Helena. A Traffic Impact Study may be required for the subdivision to mitigate traffic impacts to adjacent highways.

MDT continues to urge Ravalli County to consider the future operations of the transportation system. As development continues in Ravalli County, the transportation needs are going to increase. Intersection and roadway improvements will be needed in many locations. Funding for these improvements will be very hard to find, if not impossible. These are all funds that could be assessed as an impact or mitigation type fee and then reserved for use at a later date.

Gary Hornseth is the contact person for issuing approach permits to the Eastside Highway. He can be contacted at (406) 523-5800.

Sincerely,

Glen Cameron  
Missoula District Traffic Engineer

copies: Gary Hornseth, Missoula Area Maintenance Superintendent  
An Equal Opportunity Employer

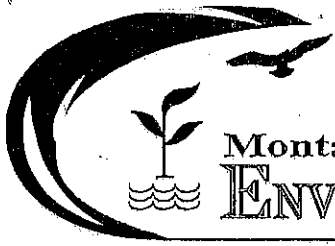
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NOV 08 2007

Ravalli County Planning Dept.  
Ravalli County Fiscal Impact Analysis Model - Sample Subdivision

OPERATING EXPENDITURES									
	Budgeted FY 2007-2008	Amount Per New Household	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	
General Fund Expenditures	752,748	39.01	0	390	1,170	1,755	2,418	2,925	
Commissioners	182,024	9.43	0	94	283	424	585	707	
Justice Court # 1	189,952	9.84	0	98	295	443	610	738	
Justice Court # 2	5,000	0.26	0	3	8	12	16	19	
Justice Court Jury Costs	427,572	22.16	0	222	665	997	1,374	1,662	
Treasurer	429,359	22.25	0	222	667	1,001	1,379	1,669	
Clerk & Recorder	159,300	8.25	0	83	248	371	512	619	
Administrative Services	683,889	35.44	0	354	1,063	1,595	2,197	2,658	
County Attorney	13,845	0.72	0	7	22	32	44	54	
County Supl. of Schools	59,352	3.08	0	31	92	138	191	231	
Office of Emergency Management	186,450	9.66	0	97	290	435	599	725	
Public Health Nurse	186,278	9.65	0	97	290	434	598	724	
Health Officer	349,624	18.12	0	181	544	815	1,123	1,359	
Environmental Health	29,100	1.51	0	15	45	68	93	113	
Veterans Services	368,423	19.09	0	191	573	859	1,184	1,432	
Information Technology	11,000	0.57	0	6	17	26	35	43	
Central Supply	37,900	1.96	0	20	59	88	122	147	
Contribution to Community	643,774	33.36	0	334	1,001	1,501	2,068	2,502	
Operating Transfers									
Total - General Fund Expenditures	4,715,590	245.36	0	2,444	7,331	10,996	15,150	18,326	
Net Fiscal Balance - General Fund	-296,290		0	1,767	1,446	2,616	4,656	5,575	
Cumulative Net Fiscal Balance	347,484		0	1,767	3,213	5,828	10,484	16,059	

Discount Rate = 4%  
Net Present Value = \$34,988



Montana Department of  
**ENVIRONMENTAL QUALITY**

Brian Schweitzer, Governor

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • [www.deq.mt.gov](http://www.deq.mt.gov)

November 9, 2007

Dear Interested Party:

The U.S. Environmental Protection Agency (EPA) recently revised the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). The NAAQS are nation-wide air quality standards established to protect the public from unhealthy levels of air pollution. EPA's revised PM NAAQS took effect on December 18, 2006.

The Montana Department of Environmental Quality (DEQ) evaluated air quality monitoring data across the state and determined that Missoula, Lincoln, and Ravalli Counties fail to meet the PM NAAQS. The Governor is required to notify EPA of all counties violating the PM NAAQS by December 18, 2007. EPA is then required to take final action on the Governor's recommended "nonattainment area" list by December 18, 2008 and officially confirm their status as nonattainment areas. As a consequence of EPA designation of nonattainment, Congress directs states to submit a federally enforceable air pollution control plan to EPA for approval.

In Ravalli County, new air quality regulations on motor vehicles, wood stoves, open burning, and industrial operations must be developed and will likely affect many county residents. Proactively, DEQ would like to work with local governments, the potentially regulated community, and other interested parties to identify and develop the new regulations to control the sources of particle matter air pollution in Ravalli County. DEQ representatives will hold the initial meeting with interested parties in the Ravalli County Commission meeting room on Wednesday, December 12, 2007 from 1 to 3 PM.

If you have any questions, please contact me or Bob Habeck ([bhabeck@mt.gov](mailto:bhabeck@mt.gov) or 444-7305). Please feel free to copy and distribute this notice to any parties you believe might be interested in this matter. Thank you for your efforts in protecting Ravalli County's clean air resource.

Robert K. Jeffrey  
Air Quality Specialist  
Air Resources Management Bureau  
Montana Dept. of Environmental Quality  
POB 200901 Helena, MT 59620-0901  
Voice (406)444-5280; fax 444-1499  
[rjeffrey@mt.gov](mailto:rjeffrey@mt.gov)

**EXHIBIT A-7**

**Randy Fifrick**

---

**From:** David Ohnstad  
**Sent:** Tuesday, January 29, 2008 4:04 PM  
**To:** Randy Fifrick  
**Subject:** RE: Sunnyside Orchards 3, Block 9, Lot 4 (Carleton)

We find that 1) granting this variance **will have a detrimental effect** on public health, safety and welfare – air quality is already impacted and any further development on un-paved roadways will only increase that problem - administering compliance on an "annual application of a dust palliative" would be impossible, 2) the conditions on which the request is based **are not unique to this property**, 3) physical conditions **do not prevent** the applicant from meeting the regulations, 4) ... and 5) **there will be an increase in public costs if the variance is approved** – the cost of meeting air quality standards will fall to property owners throughout the county.

David

---

**From:** Randy Fifrick  
**Sent:** Monday, January 28, 2008 11:41 AM  
**To:** David Ohnstad  
**Subject:** Sunnyside Orchards 3, Block 9, Lot 4 (Carleton)

Hi David,

From reading through the subdivision and variance file I see it stated several times that the RCRBD recommends denial of the variance from hard surfacing the internal road as required by 5-4-5(b)(2). In the file I don't see anything directly from you stating that the RCRBD recommends denial of this variance for this specific subdivision. If you do recommend denial please expand on why you recommend denial based on the evaluation criteria.

In an email from you to Renee Van Hoven dated Dec 13, 2005 you reference Sunnyside Orchards 3, Block 10, I am assuming you meant this subdivision (SSO3, B9, L4) in that email. In that email you state "the only condition which would prevent the building of the roadway to county standards...is the cost involved".

This should give you a quick summary of the variance proposal and the review criteria:

**Variance Request:** *The applicant is requesting a variance from Section 5-4-5 (b) of the Ravalli County Subdivision Regulations, which requires all roads within the subdivision to be hard surfaced and meet county standards for new construction. Instead, the applicant has proposed a gravel surface with annual application of a dust palliative.*

*A variance may be granted from the Subdivision Regulations when strict compliance with the regulations will result in undue hardship including substantial practical difficulty and when compliance is not essential to the public welfare. The variance application shall not be approved without an overall positive finding on the following:*

1. *The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.*
2. *The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.*
3. *Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).*
4. *The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.*



5. *The variance will not cause a substantial increase in public costs.*

Thanks,

Randy Fifrick  
Ravalli County Assistant Planner  
215 S 4th St, Suite F  
Hamilton, MT 59840  
406-375-6530  
[rfifrick@ravallicounty.mt.gov](mailto:rfifrick@ravallicounty.mt.gov)

1/29/2008